

FILED

MAR 21 2011

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

GERALD FOSTER,) CV 09-33-M-DWM-JCL
)
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Petitioner,)
)
v.) ORDER
)
)
MIKE MAHONEY, et al.,)
)
)
)
Respondents.)
)

Petitioner Foster brought this action pursuant to 28 U.S.C. § 2254.

Magistrate Judge Lynch entered Findings and Recommendation in this matter on February 7, 2011, recommending the Petition be denied on the merits. Petitioner timely objected to the Findings and Recommendation on February 17, 2011, and on March 15, 2011 he filed a motion for continuance so he can prepare an affidavit of facts in support of his objection.

A party filing objections to the findings and recommendations of a magistrate is entitled to do novo review of the “those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). A party objecting to the findings or recommendations of a magistrate judge must identify the parts of the magistrate’s disposition that the party finds objectionable and present argument and supporting authority, such that the district court is able to identify the issues and the reasons supporting a contrary result. It is not sufficient for the objecting party to merely state that he objects. See Hagberg v. Astrue, 2009 WL 3386595 at *1 (D. Mont. 2009) (“There is no benefit if the district court[] is required to review the entire matter de novo because the objecting party merely [states that he objects].”).

Petitioner's objection states that he "files this Objection under Forced Pro-Se pleadings therefore the Court is obligated to accept and file." Pet.'s Obj. (dkt #37). He provides, however, no detail or explanation as to the contours of his objection. Accordingly, Judge Lynch’s factual findings are reviewed for clear error, McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981), and his conclusions of law reviewed de novo. Barilla v. Ervin, 886 F.2d 1514, 1518 (9th Cir. 1989), overruled on other grounds by Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1174 (9th Cir. 1996).

I find no clear error with Judge Lynch's factual findings, and upon de novo review of his legal conclusions, I agree that there is no merit to the Petition. A continuance to allow for the filing of an "affidavit" could not impact that conclusion.

Accordingly, IT IS HEREBY ORDERED that the Findings and Recommendation (dkt #34) are adopted in full.

IT IS FURTHER ORDERED that

1. Gerald Foster's Motion for Continuance (dkt #40) is DENIED;
2. the Petition (dkt #1) is DENIED on the merits, and the Clerk of Court shall enter judgment in favor of Respondents and against Petitioner Foster; and
3. a certificate of appealability is DENIED.

Dated this 21st day of March, 2011.



Donald W. Molloy, District Judge
United States District Court

